

RULES OF PRACTICE of the NINTH JUDICIAL DISTRICT COURT

As Amended Effective November 10, 2008

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RULE 1: SCOPE

These Rules govern the procedure in the District Court of the Ninth Judicial District of the State of Montana. They shall be construed to secure the just, speedy and inexpensive determination of every action.

These Rules supplement the Montana Rules of Civil Procedure, Uniform District Court Rules, statutes related to Criminal Procedure and other applicable provisions of Montana Code Annotated. All prior Rules issued by the Ninth Judicial District are superseded in their entirety.

RULE 2: CONDUCTING BUSINESS AND LAW AND MOTION

Court will convene at 9:00 o'clock A.M. on each judicial day to conduct judicial business, unless the court orders otherwise. For example, telephonic scheduling conferences may be scheduled at 8:45 A.M.

The typical schedule for Law and Motion is on a bi-weekly basis:

Every other Monday:	Pondera County
Every other Tuesday:	Teton County
Every other Wednesday:	Glacier County
Every other Thursday:	Toole County

Counsel and parties should set and confirm hearing dates with the Clerk of Court. In the event that counsel or parties encounter extreme difficulties because of the date selected, they should consult with the opponent and then advise the court by stipulation or motion supported by brief and affidavit stating efforts to contact the opponent and the opponent's position.

RULE 3: FILING OF PLEADINGS AND OTHER PAPERS

A. Civil Rules Applicable: Any pleading filed in any civil action which does not conform to Rule 10 or 11 of the Montana Rules of Civil Procedure may be stricken by the court on its own initiative.

B. Form of Papers Presented for Filing: Documents should be firmly bound with holes punched at the top ready for placement in the court file. Any filing fee required by statute must accompany the document or it will not be filed. All papers filed in any action must conform to Rule 1 of the Montana Uniform District Court Rules. Any paper not in conformity with this Rule shall not be filed by the clerk and shall be returned to the party submitting it. If filed, it may be stricken by the court.

C. Necessary Copies Presented: When the clerk is required to provide copies, parties must furnish to the clerk all necessary copies of any such pleading, proposed order or other matter filed of record in any cause, so as to enable the clerk to provide conformed copies. Pre-addressed envelopes for all parties of record are likewise to be provided for distribution of copies by the clerk.

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- D. When Leave of Court Required:** When leave of court is required before a pleading can be filed, a proper motion must be filed and served. An original of the pleading should be attached (to be removed and stamped for filing immediately upon granting of the motion). This rule does not apply to filing an Information in a criminal case.

RULE 4: COURT RECORDS

- A. Withdrawal of Files or Papers.** The clerk may not permit files or documents to be removed from the office except upon order of the court for good cause shown. The clerk must obtain a receipt from any party removing any file or court record.
- B. Juvenile (Delinquent Youth and Youths In Need of Care) and Adoption Matters.** Except as provided by statute, the records and files in juvenile and adoption actions shall not be withdrawn, examined, or inspected by anyone except upon order of the court.
- C. Withdrawal Prohibited.** No will, bond, or undertaking shall be taken from the clerk's office under any circumstances, and no judgment before it is recorded.
- D. Exhibits.** Exhibits offered during a trial may be withdrawn at any time after trial upon stipulation of counsel. After a judgment has become final and appeal rights no longer exist, any party may withdraw any exhibit which that person has offered into evidence, unless some person has filed with the clerk notice that a third person is entitled to the exhibit. Withdrawal shall then be permitted only on order of the court.

If exhibits are not withdrawn within thirty days after the judgment has become final and non-appealable, the clerk shall give ten days' notice to the party offering the exhibit of his/her intention to dispose of the same and may do so, if not then withdrawn, after obtaining a court order to destroy the exhibit.

RULE 5: CONTESTED MATTERS

- A. Disposition of Motions.** All motions shall be disposed of pursuant to Rule 2 of the Uniform District Court Rules, or as otherwise required by the Montana Rules of Civil Procedure.
- B. Notice of Issue.** When all briefs have been filed, or the time for filing of briefs has expired, at least one party shall file a "Notice of Issue" with the court indicating that the matter is ready for ruling by the court. The party filing the Notice of Issue shall additionally serve a copy of the Notice of Issue on the court at chambers and shall include certification of such supplemental service in the certificate of service for the original Notice of Issue. The clerk shall thereupon deliver the original Notice of Issue and the court file to the judge having jurisdiction.

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- C. Motions to Dismiss.** Motions to Dismiss by a Defendant not supported by a timely brief shall be deemed overruled and the moving party shall have twenty days after notice from the clerk to further plead.
- D. Briefs.** Except with leave of court for good cause, Initial and Answer Briefs shall not exceed twenty pages. Reply Briefs shall not exceed ten pages.
- E. Requests for Oral Argument.** When counsel desire oral argument on a motion, other than a motion in which oral arguments are mandatory unless waived by all parties, counsel shall state with their Notice of Issue or in a separate request for oral argument their reasons in support of oral argument and why the written briefs are inadequate to fully and satisfactorily articulate their position. Oral argument will be set only by court order, whether upon motion of a party or upon a *sua sponte* determination that oral argument would be beneficial. A proposed order shall accompany any request for oral argument and the Clerk of Court shall promptly deliver both documents to the judge.
- F. Notice to the Judge of Settlement.** In the event any contested matter set for hearing is resolved between the parties, the judge's judicial assistant shall be immediately advised so that other matters may be scheduled in the time previously allotted for that case. A written stipulation or appropriate pleading shall subsequently be filed within two days. Failure to abide by this provision may result in imposition of sanctions by the court.
- G. Discovery Motions.** The court will deny any motion pursuant to Rules 26 through 37 of the Montana Rules of Civil Procedure, unless counsel shall have conferred concerning all disputed issues before the motion is filed. If counsel for the moving party seeks to arrange such a conference, and opposing counsel willfully refuses or fails to confer, the judge may order the payment of reasonable expenses, including attorney's fees, pursuant to Montana Rules of Civil Procedure 37(a)(4). Counsel for the moving party shall include in the motion a statement of compliance with this rule. See also Rule 4 of the Uniform District Court Rules.
- H. Contested Hearings.** Any motion requiring presentation of testimony shall be scheduled as a contested matter with the appropriate Request for Hearing pleading being presented to the judge's judicial assistant.
- I. Courtesy Copies.** If any pertinent document is filed within forty-eight hours of a contested hearing or oral argument, a copy thereof shall be delivered to the judge's chambers.
- J. Motions to Continue or for Extensions.** Motions to continue and for extensions must be in writing and shall state the position of opposing counsel to the motion. It is not sufficient that the motion state that opposing counsel could not be contacted. If a motion to continue or for extensions does not state the position of opposing counsel,

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the motion shall be subject to Rule 2, Uniform District Court Rules. The court will not rule on the motion until the response time has expired.

- K. Reminders to the Court.** If a judge has any matter under advisement for more than ninety days, any party affected thereby may send to the judge a letter, with copies to all counsel, describing the matter under advisement and stating the date it was taken under advisement.

RULE 6: TIME LIMITS

In any hearing, contested or uncontested, or in any show cause hearing, injunction hearing or trial of any case, the court may direct the parties to state the amount of time their case will take to present. The court may then impose time limits on the presentation by each party, and retains the discretion to allot a lesser time than that requested by each party. In the event time limits are imposed, the court has full authority and discretion to enforce those limits.

RULE 7: SCHEDULING ORDERS

- A. Scheduling Orders.** When a case is at issue, any party may file a motion for a scheduling order, and a scheduling order shall be issued. In lieu of a motion for scheduling order, any party may move for a scheduling conference. The party filing the Motion shall serve a copy of the Motion on the court at chambers and shall include certification of such supplemental service in the certificate of service for the original Motion. The dates in the scheduling order shall not be changed absent court order upon a showing of good cause. Motions to extend deadlines or dates shall include a statement of the trial date, if set. Please see Exhibit A.

- B. Exemptions.** Pursuant to Rule 16(b), M.R.Civ.P., the following matters are exempt from the scheduling procedure required by this Rule unless such a case becomes a contested case:

- (1) juvenile cases;
- (2) URESA actions;
- (3) dependent and neglect cases;
- (4) abstracts and transcript of judgment and enforcement of judgment;
- (5) adoptions;
- (6) sanity;
- (7) probates;
- (8) criminal cases (included to eliminate the possibility of confusion);
- (9) municipal court , justice court and small claims appeals;
- (10) administrative appeals;
- (11) seizures and forfeitures;
- (12) habeas corpus;
- (13) name changes; and
- (14) conservatorships and guardianships.

Scheduling in the above matters shall proceed according to orders issued in each case.

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RULE 8: SETTLEMENT CONFERENCES

- A. Settlement Conferences Required.** In each civil case, there will be a settlement conference. The conference shall be a master or mediator-supervised settlement conference, which is provided for in the Scheduling Order prepared and issued in accordance with Rule 7 of these Rules. See Exhibits B and C.
- B. Proceedings Confidential.** No person present at a settlement conference, including the settlement master or mediator, shall be subject to examination concerning statements made by any person or the positions of the parties at the settlement conference. The parties will not subpoena or otherwise require the settlement master or mediator to testify regarding the settlement conference or the settlement master's or mediator's opinions regarding the case. (§ 26-1-813, MCA.)

RULE 9: TRIALS AND TRIAL SETTINGS

- A. Trial Dates.** Trial dates shall be set at any stage of the proceedings deemed appropriate by the presiding judge.
- B. Jury Panels.** At least thirty days prior to the commencement of the jury term, a panel of jurors shall be drawn to be used. The jury term is July through June. The Clerk of Court shall, upon a juror's service on a trial, remove that juror's name from the panel (unless requested by the juror to serve on more panels). Any juror who comes in for selection on a case and who is not called to serve on the trial, shall have their name put back into the panel for further selection.
- C. Six Person Juries.** Pursuant to § 3-15-106, MCA, in all civil actions where the relief sought in the Complaint is under the sum of \$10,000.00, the trial jury shall consist of six persons. The parties may stipulate to six-person juries in other civil cases.
- D. Voir Dire Examination.** Time limits for voir dire examination in civil cases may be set at the Final Pre-Trial Conference.

The only proper purpose of voir dire of jurors is to select a panel who will fairly and impartially hear the evidence presented and render a just verdict and to determine the grounds for any challenge for cause.

As a general rule, counsel should not:

- (1) Ask any questions of an individual juror that are susceptible of being asked collectively.
- (2) Ask questions covered by and answered in the juror questionnaire, except to explore some questionnaire answer in greater depth.
- (3) Repeat questions asked and answered, even though asked by opposing counsel.
- (4) Use voir dire for the purpose of attempting to instruct the jury on the law. That is the court's function.

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- (5) Use voir dire for the purpose of arguing the case.
- (6) Ask a juror what his or her verdict might be under any hypothetical situation based on any expected evidence or otherwise.

Upon failure of counsel to abide by this rule, the court may assume voir dire of the jury. In such case, the court may require counsel to submit in writing specific questions to be asked by the court.

- E. Vacating Trials.** If a jury trial setting is vacated pursuant to settlement or a motion within five days of trial, the parties or any of them may be assessed jury costs incurred, including a clerk's salary for up to three days and sheriff's costs.

RULE 10: CRIMINAL ACTIONS

- A. Use of Forms.** A written Acknowledgment and Waiver of Rights shall be presented to the court by defense counsel at or before the time of a guilty plea. Plea Agreements shall be submitted for either binding or non-binding.

- B. Omnibus Hearings.** Except as otherwise provided by order of the presiding judge, the form order attached as Exhibit D shall be completed at the Omnibus Hearing.

- C. Status Hearings.** A Status Hearing shall be held on the record before the court. The Defendant shall be present. Prior to the Status Hearing, counsel for the prosecution and defense shall have conducted plea negotiations. They shall report thereon to the Court at the Status Hearing. If a Plea Agreement has been reached, the court may take the change of plea at that time. The parties shall be prepared to discuss the status of discovery, likely motions, the scheduling of hearings, whether there is reason to change the trial date and any other pre-trial issues.

- D. Arraignment.** At arraignment, the court shall issue an order.

- E. Motions.** A courtesy copy of all motions shall be submitted to the presiding judge together with a proposed order setting hearing. Unless otherwise ordered, the following motions do not require a brief and may be ruled on summarily without prior notice to opposing counsel:

Motions to Set/Reset/Vacate Hearings for:

- | | |
|--|--------------------------------------|
| - Arraignments | - Bench Trials - Telephonic Hearings |
| - Answer Hearing | - Change of Pleas |
| - Bail Hearing | - Evidentiary Hearings |
| - Status Conference | - Dispositional Hearings |
| - Omnibus Hearing | - Miscellaneous Hearings |
| - Final Pre-Trial Conference | - Vacate any Pre-Trial Hearing |
| - Jury Trials and Set for Change of Plea | |
| - Sentencing | |

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Miscellaneous Motions:

- Add Witnesses
- Additional Time to File/Respond to Briefs
- Change Conditions of Release
- Chemical Evaluation – State to Pay the Costs
- Discovery Request
- Mental Evaluation – State to Pay the Costs
- Neuro-Psycho Evaluation – State to Pay the Costs
- Psychological Evaluation – State to Pay the Costs
- Quash Order
- Quash Bench Warrant
- Quash Transportation Order
- Reinstate Bond and Release Defendant
- Release - Quash Bench Warrant
- Release Defendant's Personal Property
- Request for Credit For Time Served
- Request for Defendant Attend Funeral and Wear Street Clothes
- Request for Defendant to Leave _____ County/State of Montana
- Request for Interpreter – State to Pay Costs
- Seal Plea Agreement
- Sex Offender Evaluation – State to Pay Costs
- State to Pay for Costs of Deposition
- Substitution of Counsel
- Transport Defendant
- Withdraw as Counsel of Record

RULE 11: DOMESTIC ACTIONS

A. Assumption of Cases Involving Families and Children by One Department.

In order to better serve the needs of families and children as well as efficient administration of justice, cases involving families with children, conservators, or guardianships shall be consolidated so that one judge has jurisdiction of all related civil and criminal proceedings. Some examples of cases which would be consolidated pursuant to this Rule are:

- (1) conservatorship civil proceeding;
- (2) civil commitment proceeding;
- (3) juvenile proceeding;
- (4) criminal cases involving domestic violence or other violence which affects or impacts the child directly;
- (5) abuse or neglect cases and adoptions; or
- (6) dissolutions.

In those instances where related cases have been filed in different departments, the cases shall be assumed by the court in jurisdiction which has jurisdiction over the first case filed, but remain separate causes. Such assumption by one department will insure

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consistent and fully informed decisions concerning families. Inquiry shall be made at scheduling and omnibus hearings to determine if there are related cases.

B. Juvenile Cases Involving Same Transaction. Where two or more juveniles are charged with offenses arising out of the same transaction, one judge shall have jurisdiction over all such actions.

C. Parenting Plan Guidelines. The Parenting Plan Guidelines, attached as Exhibit E, are hereby incorporated into these Rules. Counsel shall provide a copy of these guidelines to clients in cases involving parenting.

RULE 12: STIPULATIONS

No agreement or consent between the parties, or their attorneys, shall be accepted by the court unless made in open court, and taken down by the court reporter or entered in the minutes by the clerk, or unless the same shall be in writing, signed by the party against whom the same may be urged, or by that party's attorney. It shall be the duty of the party relying upon such minute entry to see that the same is duly entered.

RULE 13: OUTSIDE JUDGE

Pursuant to Section 3-1-308 MCA, the district judge substituted or disqualified shall call in a judge from another district. When a case is assigned to a judge from another district, the clerk shall make and forward to such judge a complete copy of the case file to date. Likewise, copies of documents subsequently filed shall be promptly transmitted to the judge.

The outside judge shall be encouraged to schedule hearings and trials in consultation with the judicial assistant of the judge who originally had jurisdiction.

The judge of this district who originally had jurisdiction and the clerk shall promptly notify one another when they learn of any hearing or trial scheduled by the outside judge so that necessary arrangements can be made.

RULE 14: DISMISSAL OF ACTION FOR LACHES

The Clerk of Court will, on an annual basis, bring to the attention of the judge in whose department it is filed any cause which the pleadings show to have been at issue and no activity has occurred for more than one year. An order to show cause for failure of prosecution will be issued, and the court may dismiss the case unless good cause is shown that it should remain open.

RULE 15: ORDER TO SHOW CAUSE AND TEMPORARY RESTRAINING ORDERS

Two originals of any order to show cause, temporary restraining order or like order shall be presented to the judge. One shall be signed by the judge as the original order and

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retained as part of the court file. The other shall be issued by the clerk and shall be used for the purpose of making service.

RULE 16: JUDGMENT ON WRITTEN INSTRUMENT

In all cases in which a judgment is entered upon a written instrument, the instrument must be presented to the clerk at the time judgment is granted by the court. The clerk shall note in ink across the face of the instrument the fact of the entry of judgment and its date. The clerk shall sign the entry, attach the official seal, and file the instrument. The instrument shall not be removed except by the order of the court in writing setting forth the facts of such removal.

RULE 17: RULES OF DECORUM

The District Court adopts the Courtroom Decorum and Practice Guidelines attached as Exhibit F.

RULE 18: FREE PRESS AND FAIR TRIAL

Within the spirit of the First Amendment, the presiding judge in any court proceedings open to the public shall permit the recording and broadcasting by radio and television, and the taking of photographs in the courtroom unless the judge is convinced from the particular circumstances of the individual case, or any portion, that such recording, broadcasting, or photographing would substantially and materially interfere with the primary function of the court to resolve disputes fairly under the law.

The District Court has the responsibility to assure appropriate decorum within the courtrooms of this court and to assure no substantial or material interference with the primary function of the court to fairly resolve disputes. No still photography, videotaping, audio recording or broadcasting of court proceedings shall occur without prior consent of the presiding district judge. That in the event such coverage is granted, the following guidelines shall apply:

TELEVISION and RADIO.

No more than one camera will be permitted. It shall be located in a preselected position and operated by one cameraman. It will be the responsibility of each broadcast news representative to achieve an understanding as to who will function at any given time and as to how the coverage will be pooled. Permission for such coverage is on the condition that all representatives share in the pool arrangement. The television camera shall give no indication as to whether it is or is not operating and it shall remain stationary during the entire proceeding.

Sufficient film or tape capacities shall be available to alleviate film or tape changes except during court recess. Microphones, if utilized, shall be limited to three: one near counsel table, one on the bench, and one near the witness chair. The television microphone shall also serve the radio media. All equipment shall be in place at least fifteen minutes before each session.

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Broadcast coverage outside the courtroom shall be handled with care and discretion, but need not be pooled. The Jury Voir Dire Process shall not be televised or broadcast.

PRINT MEDIA.

Print Media Representatives, including still photographers, will be accommodated on a first-come basis, and position themselves in the spectator section. Photographers and reporters will not be permitted to roam the courtroom. No flash cameras will be permitted and the cameras used shall operate with no distracting noise.

GENERAL.

There will be no interviews of jurors, witnesses, or court personnel either in or out of court during a trial or any ancillary proceeding. This rule applies to all of the media. There will be no available telephones on the courtroom floor. Representatives of the media shall not be dressed in a manner which would set them apart from other spectators.

RULE 19: TREATMENT COURT

A. Family Treatment Court.

The Judge of the Ninth Judicial District Court of the State of Montana hereby establishes a Treatment Court. The Ninth Judicial District Family Treatment Court seeks to improve the quality of life in our community by establishing a comprehensive, diversionary program of incentives and sanctions aimed at breaking the offender's addiction.

Possible Treatment Court participants will be screened by the County Attorney's Office and recommended to the court for entry through a joint stipulation between the County Attorney and the defendant's attorney.

Eligibility for Treatment Court will be limited to defendants charged with one of the following enumerated offenses, or a probation violation:

CRIMINAL POSSESSION OF DANGEROUS DRUGS, A FELONY, in violation of Section 45-9-102 MCA;

THEFT, A FELONY, in violation of Section 45-6-301 MCA, when motivated by addiction; ISSUING A BAD CHECK, A FELONY, in violation of Section 45-6-316 MCA, when motivated by addiction;

DECEPTIVE PRACTICES, A FELONY, in violation of Section 45-6-317, when motivated by addiction; and FORGERY, A FELONY, in violation of Section 45-6-325 MCA, when motivated by addiction.

Defendants with prior violent or sexual offense convictions, or who have other pending felony charges, will not be eligible to take part. The Treatment Court Judge shall have the authority to impose conditions on participants pursuant to the court's statutory contempt powers and the contractual nature of plea agreements under Montana Law. These legal bases also provide the Treatment Court jurisdiction to sanction these offenders for failure to comply with Treatment Court conditions.

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B. Youth Treatment Court.

The mission of the Ninth Judicial District Youth Treatment Court Program is to improve health and pro-social function of youth and families through application of therapeutic jurisprudence.

Assessment of community resources indicated the Youth Treatment Court Program could likely provide services to twenty juveniles and their families annually. Specific eligibility criteria developed and approved by the Team and Advisory Group follow:

- Any non-violent felony or misdemeanor offense;
- Admission of offense;
- Evidence of substance abuse pattern or disorder or documented risk for substance abuse;
- No other pending legal cases;
- 12 to 17 years of age (exceptions by Juvenile Drug Court Team; have jurisdiction until 21 years of age);
- No history of violent offenses;
- Youth has been placed on probation by means of consent adjustment, consent decree or disposition;
- Youth is on probation pending disposition of a revocation or pending an additional disposition;
- Youth and his or her parent(s)/guardian(s) are willing to participate and comply with Program requirements; or
- Juvenile Probation and the County Attorney's Office will review eligibility criteria on an individual basis, ensuring public safety and federal compliance through adherence to defined eligibility criteria.

The following entities may refer a Juvenile and assess Youth Treatment Court Program eligibility; these entities are: District Court, Justice Court, Municipal Court, County Attorney's Office, Public Defender's Office, School, family or Juvenile Probation. The Youth Treatment Court Judge will request that all unanswered charges or outstanding warrants for youth accepted into the Youth Treatment Court Program be transferred to the Youth Treatment Court Judge.

RULE 20: CASH BAIL AND BAIL BONDS

A. Cash Bail Delivery.

Whenever cash bail is delivered to any Clerk of Court, justice of the peace, or municipal judge, the cash must, as soon as possible, be deposited in a special account with some financial institution where checks, warrants, or drafts can be drawn on the account for the transfer of funds.

B. Transfer to District Court.

Whenever bail has been set by and furnished to a justice of the peace and the cause in which the bail was furnished is being transferred to the District Court, the following must be followed:

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At the time the papers transferring the case to the District Court are filed with the Clerk of Court, the bail must also be delivered to the clerk. The amount and nature of the bail furnished must be endorsed upon the order whereby the justice or judge transfers the cause to the District Court.

(1) If the bail furnished was cash bail, the justice or municipal judge must deposit a proper check, warrant or draft for the full amount of the bail. Upon receipt of the check, warrant or draft, the Clerk of Court must issue a trust fund receipt and deliver it to the justice of the peace.

(2) If the bail furnished was a bail bond or other bail as permitted by § 46-9-401, MCA, the justice of the peace must deliver the actual documents furnished as bail to the Clerk of Court. Upon deposit of such bail, the clerk must issue a receipt specifying the documents received.

C. Action Originally in District Court.

Whenever bail has been set by and furnished to a justice of the peace in an action where the District Court has original trial jurisdiction, and the county attorney elects to proceed in District Court by filing a motion for leave to file an information direct, the following procedure must be complied with:

(1) The county attorney must, contemporaneously with the filing of the motion in District Court, file a written request with the justice of the peace asking that the bail be transferred to the District Court;

(2) The county attorney must deliver to the justice of the peace a duplicate copy of such request;

(3) The justice of the peace must forthwith endorse upon the original request and the duplicate copy the proper information regarding the nature of the bail, and must forthwith transfer the bail to the District Court as provided in (1) or (2) above. The duplicate copy of the request must be filed with the Clerk of Court.

(4) Prior to release of any bail or bond, the original receipt must be presented with appropriate identification. The funds will then be released to the posting party only, unless otherwise directed by the court. Cash bonds posted by a defendant may be applied (or at least a portion) to restitution, fines and fees prior to release.

Dated this 10th day of November, 2008.

/s/ Laurie McKinnon
Laurie McKinnon
District Judge

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EXHIBIT A

MONTANA NINTH JUDICIAL DISTRICT COURT, _____ COUNTY

,
Plaintiff(s),)

vs.)

,
Defendant(s).)

Cause No. _____

RULE 16(b) SCHEDULING ORDER

To enable the court to issue the Scheduling Order required by Rule 16(b), M.R.Civ.P., the attorney for the Plaintiff is directed to consult with the attorney for the opposing parties and any unrepresented party and thereafter file with the court the attached proposed Scheduling Order. If the proposed Scheduling Order is not filed with the court within 30 days of the date of this Order, the court will issue the attached Scheduling Order *sua sponte*.

DATED this _____ day of _____, 200_.

District Judge

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EXHIBIT B

MONTANA NINTH JUDICIAL DISTRICT COURT, _____ COUNTY
,
Plaintiff(s),
vs.
Cause No. _____
,
Defendant(s).

SCHEDULING ORDER

Preliminary Note: Discovery shall be completed and the Pretrial Order filed within seven months of the date of this Order unless, for good cause shown, the court allows a longer period.

1. _____: All parties are to be joined and all amendments to the pleadings are to be filed.
2. _____: Names and addresses of Plaintiff's expert witnesses must be furnished to defense counsel on or before this date.
3. _____: Names and addresses of Defendant's expert witnesses must be furnished to Plaintiff's counsel on or before this date.
4. _____: All discovery in this matter shall be completed on this date.
5. _____: Exchange exhibits and final witness lists.
ESTABLISHING DEADLINES FOR THE IDENTIFICATION OF EXPERT WITNESSES, WITNESSES AND EXHIBITS DOES NOT SUPERSEDE THE REQUIREMENT OF ALL PARTIES TO FAIRLY AND ACCURATELY RESPOND TO OTHER DISCOVERY. THAT IS TO SAY, BY ESTABLISHING THESE DEADLINES, IT IS NOT INTENDED THAT THE PARTIES CANNOT IDENTIFY EXPERTS, WITNESSES, OR EXCHANGE EXHIBITS IN RESPONSE TO OTHER DISCOVERY BY CLAIMING THAT THE EXCHANGE OF INFORMATION IS NOT DUE UNTIL THE DEADLINES ESTABLISHED BY THIS ORDER. ALL DISCOVERY IS TO BE FAIRLY AND ACCURATELY RESPONDED TO AND FAILURE TO DO SO MAY RESULT IN APPROPRIATE SANCTIONS.
6. _____: All pretrial motions, including motions in limine and motions for summary judgment, along with supporting briefs, shall be filed and served on opposing counsel on or before this date. Filing of answer briefs and reply briefs shall comply with the schedule provided by Rule 2(a) of the Uniform District Court Rules.

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7. _____: Hearings on motions or submission of the motions on briefs shall be accomplished by this date. It shall be the responsibility of the moving party to advise the court either that the motions are submitted on briefs or to request a hearing in accordance with Rule 6 of the Local Rules of the Ninth Judicial District.
8. _____: The lawyers for all parties shall meet in person and discuss settlement in a lawyers' resolution conference as provided by Rule 8 of the Local Rules.
9. No further pretrial conferences shall take place unless requested by counsel. If requested, it shall be the obligation of counsel to schedule the conference with the court.
10. There shall be no changes in this Scheduling Order absent court order upon showing of good cause. All motions for continuance shall be submitted in writing, supported by affidavit, and shall bear the signatures of the parties.
11. The Pretrial Order shall be prepared and submitted pursuant to Rule 5 of the Uniform District Court Rules.
_____:Plaintiff's Proposed Pretrial Order shall be served on Defendant.
_____:Defendant's Proposed Pretrial Order shall be served on Plaintiff.
_____:The final Pretrial Order is to be submitted to the court.
The parties shall advise the court in a cover letter submitted with the Pretrial Order of any special requests regarding the scheduling of the trial, including dates that counsel agree should not be devoted to trial of the case and the anticipated length of trial. The case will be set for trial only upon submission of the Settlement Master's report.
12. _____: A settlement conference shall be held, as provided in Rule 8 of the Local Rules, by this date. The Settlement Master shall submit a report to the court within 5 days of completion of the conference.
13. Proposed jury instructions (in a jury case) are to be exchanged and submitted a week before trial to the court.
14. The Original Proposed Findings of Fact/Conclusions of Law are to be filed with the Clerk of Court three days prior to trial along with a copy for the Judge. A 3 ½" disk or CD containing the Findings/Conclusions should also be supplied to the court.

DATED this _____ day of _____, 200__.

District Judge

RULES OF PRACTICE of the NINTH JUDICIAL DISTRICT COURT

EXHIBIT C

MONTANA NINTH JUDICIAL DISTRICT COURT, _____ COUNTY

,)	
Plaintiff(s),)	
)	
vs.)	Cause No. _____
)	SCHEDULING ORDER
,)	(Issued as a result of the parties'
Defendant(s).)	failure to submit an agreed-upon
)	Scheduling Order)

Pursuant to Rule 16(b), M.R.Civ.P., it is the duty of the court to issue a scheduling order within 120 days of the filing of the complaint. No proposed scheduling order having been filed by the parties, the court issues the following schedule that shall govern this case:

DATE

One month from the
date of this order

Two months from the
date of this order

Three months from the
date of this order

Four months from the
date of this order

Five months from the

EVENT

All parties must be joined and
amendments to the pleadings filed.

Names of expert witnesses must be
provided to opposing counsel.

Discovery closes and all exhibits and
lists of witnesses shall be exchanged
with opposing counsel. The lawyers
shall meet in person in a resolution
conference in accordance with Rule 9 of
the Local Rules.

All motions must be filed and shall be
briefed in accordance with the schedule
provided in Rule 2(a) of the Uniform
District Court Rules. There will be no
hearings on motions unless scheduled
in accordance with Rule 4 of the Local
Rules.

The Pretrial Order shall be completed

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date of this order

and filed with the court, prepared pursuant to Rule 5 of the Uniform District Court Rules. The parties shall advise the court in a cover letter submitted with the Pretrial Order of any special requests regarding scheduling of the trial.

Two months from the
date of this order

Names of expert witnesses must be provided to opposing counsel. A settlement conference shall be held in accordance with Rule 8 of the Local Rules.

Proposed jury instructions (in a jury case) are to be exchanged and submitted

DATED this _____ day of _____, 200__.

District Judge

RULES OF PRACTICE of the NINTH JUDICIAL DISTRICT COURT

EXHIBIT D

MONTANA NINTH JUDICIAL DISTRICT COURT, TETON COUNTY

STATE OF MONTANA,)	Cause No. _____
)	
Plaintiff,)	
)	OMNIBUS HEARING
-vs-)	MEMORANDUM
)	AND ORDER
_____ ,)	
)	
Defendant.)	

Counsel for the State of Montana and for the Defendant, by signing this memorandum, acknowledge that they have both read the omnibus hearing statute, MCA 46-13-110, and are now prepared to discuss any pretrial matters in addition to and including those matters listed in MCA 46-13-110. The discussion of and subsequent agreement on these pretrial matters is summarized by this memorandum.

I. DISCOVERY

1. In compliance with MCA 46-15-322, the State shall immediately and on a continuing basis:
 - a. Disclose the names of the State's witnesses (including experts and their statements) and copies of any written or recorded statements.
 - b. Disclose and make available for inspection all physical and documentary evidence in the State's possession.
 - c. Disclose all oral, written or recorded statements made by the Defendant to investigating officers or to third persons.
 - d. Disclose all exculpatory evidence known to the State.

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2. In compliance with MCA 46-15-323, the Defense shall immediately and on a continuing basis:

- a. Disclose the names of the Defendant's witnesses (including experts), their statements, or a short summary of their anticipated testimony if no statement exists.
- b. Disclose and make available for inspection all physical or documentary evidence in the Defendant's possession that will be used at trial.

II. FITNESS TO PROCEED

The Defendant's fitness to proceed is at issue: () Yes () No If yes:

- a. A psychiatric examination of the Defendant shall be conducted by (the State Hospital) _____

- b. Further order: _____

III. INFORMANT, SURVEILLANCE AND SEARCH

INFORMANT

The State declares that a confidential informant was involved:

() Yes () No If yes:

- a. The informant will be called as a witness: () Yes () No
- b. The State has disclosed the informant's identity: () Yes () No
- c. The State will claim the privilege of nondisclosure; a hearing on the privilege will be set for _____.

ELECTRONIC SURVEILLANCE

The State declares there has been electronic surveillance of the Defendant on his/her premises:

() Yes () No If yes:

All material obtained by electronic surveillance has been supplied to the Defendant. If not, a hearing on disclosure is set for _____.

SEARCH WARRANT

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The State declares there was () was not () a search warrant executed with respect to the Defendant or his/her residence or his/her vehicle. All material obtained through such search warrant has been disclosed to Defendant.

INVESTIGATIVE SUBPOENA

The State declares there was () was not () an investigative subpoena in connection with this matter.

The State shall produce an inventory of materials/information obtained through such subpoena to the Defendant within ten 10 days of this Order.

IV. SUPPRESSION MOTIONS

1. The Defense moves, pursuant to MCA 45-13-302, to suppress physical evidence:
() Yes () No If yes:

The Defense brief filed by: _____

The State's brief filed by: _____

Date of hearing: _____

2. The Defense moves, pursuant to MCA 45-13-301, to suppress confession or admission:

() Yes () No If yes:

The Defense brief filed by: _____

The State's brief filed by: _____

Date of hearing: _____

V. OTHER CRIMES, WRONGS OR ACTS

The State intends to introduce evidence of other crimes, wrongs, or acts pursuant to Rule 404 M.R.E.: () Yes () No If yes:

- a. The notice required by State v. Just, as modified by State v. Matt; shall be filed by: _____

- b. The Defense may file a brief opposing the use of any of the matters referred to in the notice by: _____

The State's reply brief due on: _____

VI. AFFIRMATIVE DEFENSES

The Defense is aware of the time limits imposed by MCA 46-15-323 in which Defendant may assert certain defenses, or give notice of intent to introduce

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certain evidence.

1. The Defense asserts an affirmative defense: () Yes () No If yes:
 - a. The Defense will assert the affirmative defense of _____

 - b. The names and addresses of all witnesses to be called in support of any affirmative defense together with all written reports or statements made by them shall be furnished to the State no later than 20 days before trial.
 - c. The State shall furnish the Defense with the names and addresses of all witnesses the State intends to call to rebut the Defendant's affirmative defense no later than 5 days before trial.
2. The Defense will rely on a general denial: () Yes () No
3. The Defense will () will not () introduce evidence of character of himself/herself or of the following witnesses: _____

VII. MOTIONS BY THE STATE

The State has pretrial motions: () Yes () No If yes:

The motions are: _____

The State's brief filed by: _____

The Defendant's brief filed by: _____

Deemed submitted on briefs: () Yes () No

If no, date of hearing: _____

VIII. MOTIONS BY THE DEFENDANT

The Defendant has pretrial motions: () Yes () No If yes:

The motions are: _____

The Defendant's brief filed by: _____

The State's brief filed by: _____

Deemed submitted on briefs: () Yes () No

If no, date of hearing: _____

IX. AGREED UPON DISPOSITION

An agreed upon disposition will be reached by the parties:

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() Yes () No

X. JURY REQUEST

The Defendant specifically demands a jury trial () Yes () No

XI. TRIAL PROCEDURE

1. Expected length of trial is _____ days. The trial date is _____ days from the date the Information was filed.
2. The Court will draw a panel consisting of _____ prospective jurors.
The State waives any right to be present at the drawing: () Yes () No
The Defense waives any right to be present by the drawing: () Yes () No
3. All motions in limine shall be filed and called up for hearing not later than 5 days prior to trial unless upon good cause shown.
4. This case is set for trial with () without () a jury: _____
A Status Hearing is set for: _____
5. Defendant hereby does () does not () waive claim regarding speedy trial with respect to this trial setting.
6. The State shall submit jury instructions to the Court 10 days prior to trial. The Defendant shall submit jury instructions to the Court 7 days prior to trial. Both parties shall submit any reply instructions to the Court 4 days prior to trial.

XII. STIPULATION OF ENTRY

Counsel for the State and for the Defendant have reviewed this Omnibus Hearing Memorandum and Order and hereby stipulate to its entry by the Court.

DATED: _____

COUNTY ATTORNEY

DEFENDANT'S COUNSEL

SO ORDERED: _____

DISTRICT

JUDGE

RULES OF PRACTICE of the NINTH JUDICIAL DISTRICT COURT

EXHIBIT E

MONTANA NINTH JUDICIAL DISTRICT PARENTING GUIDELINES

(REVISED 11/98)

A powerful cause of stress, suffering, and maladjustment in children of dissolution is not simply the dissolution itself, but continuing conflict between the parents before, during and after the dissolution. To minimize conflict over the children, the parents should agree on a parenting arrangement that is most conducive to the children's having frequent and meaningful contact with both parents with as little conflict as possible. When parents' maturity, personality and communication skills are adequate, the ideal arrangement is reasonable parental contact upon reasonable notice, since that provides the greatest flexibility. The next best arrangement is a detailed parenting agreement made by the parents to fit their particular needs and, more importantly, the needs of the children. If the parents are unable to agree, however, the following guidelines will help the parents in knowing what the presiding judge in the Ninth Judicial District believes are generally reasonable, unless special circumstances require a different arrangement. (See Paragraph 1.17 below.) Unless these guidelines are incorporated in a court order, they are not compulsory rules, only a general direction for parents. In the event parental Contact becomes an issue in court, the judge reserves the right to set whatever parenting schedule best meets the needs of the children in that case.

1. GENERAL RULES

Parents should always avoid speaking negatively about the other and should firmly discourage such conduct by relatives or friends. In fact, the parents should speak in positive terms about the other parent in the presence of the children.

Each parent should encourage the children to respect the other. Children should never be used by one parent to spy on the other. Parents should establish the basic rules of conduct and discipline to be observed by both parents and step-parents, so that the children do not receive mixed signals.

Children will benefit from continued contact with all relatives and family friends on both sides of the family for whom they feel affection. Such relationships should be protected and encouraged. But relatives, like, parents, need to avoid being critical of either parent in front of the children. Parents should have their children maintain ties with both the maternal and paternal relatives. In Montana, grandparents have a legal right to reasonable contact with their grandchildren, if it is in their best interests. Usually the children will visit with the paternal relatives during times the children are with their father and with the maternal relatives during times they are with their mother.

Parents should be discouraged from making residential changes that are disruptive to a child's lifestyle, where the parents have been or are going through a contentious dissolution/parenting case. When the parents are sharing in the parenting of a child, or at any time prior to the entry of a decree, and both parents reside in the Ninth Judicial District, the court will consider a change of the child's residence to a location outside the

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District as having a significant effect upon the child's relationship to family members and others and adjustment to his/her home, school, and community. The court will also consider and balance the Constitutional right of the parent to travel. When the custodial parent moves out of the Ninth Judicial District, the child's residence shall not be moved outside the Ninth Judicial District without an order from the court after hearing or upon written stipulation of the parties that is approved by the court. The court will consider keeping the child in the Ninth Judicial District as a positive development for the child based upon legitimate, case-specific circumstances which must be presented to the court at a hearing with all parties present.

In cases where both parents resided in the same community at the time of separation, and then one parent left the area, thus changing the pattern of parental contact, the court will consider imposing the travel costs for the children necessary to facilitate future contact, on the parent who moved. The court will also consider other factors, however, such as the economic circumstances of the parents and the reasons prompting the move.

1.1 Parental Communication. Parents should always keep each other advised of their home and work addresses and telephone numbers. As far as possible, all communication concerning the children shall be conducted between the parents themselves in person, or by telephone at their residences and not at their places of employment. Consistent with our emphasis on improved parental communication, it is suggested that parents communicate well in advance about moves that will impact schooling or visitation.

1.2 Grade Reports and Medical Information. Parents shall provide one another with grade reports and notices from school as they are received. Parents shall communicate independently with the school and with the children's doctors and other professionals regarding the children. Each parent shall immediately notify the other of any medical emergencies or serious illnesses of the children.

Each parent shall notify the other of all school or other events (like Church or Scouts) involving parental participation. If the child is taking medications, each parent shall provide or be provided with a sufficient amount of medication and the appropriate instructions.

1.3 Clothing. Parents shall send an appropriate supply of children's clothing with them, which shall be returned clean (when reasonably possible), with the children. Parents shall advise, as far in advance as possible, of any special activities so that the appropriate clothing may be sent.

1.4 Withholding Support or Parental Contact. Neither parental contact nor child support is to be withheld because of either parent's failure to comply with a court order. Only the court may enter sanctions for non-compliance. Children have a right both to support and parental contact, neither of which is dependent upon the other. In other words, "no support" does not mean "no parental contact" and "no parental contact" does

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not mean “no support.” If there is a violation of either a parenting or a support order, the exclusive remedy is to apply to the court for appropriate sanctions.

1.5 Adjustments in Parental Contact Schedule. Although there is or there may be a specific schedule, the parties are expected to fairly modify parental contact when family necessities, illnesses or commitments reasonably so require. The requesting parent shall act in good faith and give as much notice as circumstances permit.

1.6 Parent's Vacation. Unless otherwise specified in a court order or agreed by the parties, each parent is entitled to a reasonable period of vacation time, usually equal to that of the other parent. In the instance of extended vacation periods, i.e., summer vacations, the parents shall communicate in writing on or before May 1 of each year their choices of vacation periods.

1.7 Insurance Forms. The parent who has medical insurance coverage on the children shall supply, as applicable, insurance forms and a list of insurer-approved or HMO-qualified health care providers in the area where the other parent is residing. A parent who, except in an emergency, takes the children to a doctor, dentist or other provider not so approved or qualified should pay the additional cost thus created. However, when there is a change in insurance which requires a change in medical care providers and a child has a chronic illness, thoughtful consideration should be given by the parties to what is more important: allowing the child to remain with the original provider or the economic consequences of changing. When there is an obligation to pay medical expenses, the parent responsible therefore shall be promptly furnished with the bill by the other. The parents shall cooperate in submitting bills to the appropriate insurance carrier. Thereafter, the parent responsible for paying the balance of the bill shall make arrangements directly with the health care provider and shall inform the other parent of such arrangements. Insurance refunds should be promptly turned over to the parent who paid the bill for which the refund was paid.

1.8 Child Support Abatement. Child support, once ordered shall not abate unless a court order otherwise provides. The only way child support can be changed is by court Order. Parents cannot agree to a change in support without court approval. The purchase of clothing, food or other necessities do not constitute a deduction from court-ordered child support.

1.9 Missed Parental Contact. When scheduled parental contact cannot occur due to events beyond either parents' control, such as illness of the child or of the parent exercising contact with the child, a mutually agreeable substituted parental contact date shall be arranged, as quickly as possible. Each parent shall timely advise the other when parental contact cannot be exercised. Missed parental contact should not be unreasonably accumulated.

1.10 Parental Contact a Shared Experience. Because it is intended that parental contact be a shared experience between siblings and, unless these Guidelines, a court order, or circumstances, such as age, illness, or the particular event, suggest otherwise,

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all of the children shall participate in any particular contact.

1.11 Telephone Communication. Telephone calls between parent and child shall be liberally permitted at reasonable hours and at the expense of the calling parent. Parents may call the children at reasonable hours during those periods the children are with the other parent. The children may, of course, call either parent, though at reasonable hours, frequencies and at the cost of the parent called if it is a long distance call. During long vacations the parent with whom the child is on vacation is only required to make the child available to telephone calls every five days. At all other times the parent the child is with shall not refuse to answer the phone or turn off the phone in order to deny the other parent telephone contact. If a parent uses an answering machine, messages left on the machine for the child should be returned. Parents should agree on a specified time for calls to the children so that the children will be made available.

1.12 Mail Contact. Parents have an unrestricted right to send cards, letters and packages to their children. The children also have the same right with their parents. Neither parent should interfere with this right.

1.13 Privacy of Residence. A parent may not enter the residence of the other except by express invitation of the resident parent, regardless of whether a parent retains a property interest in the residence of the other. Accordingly, the children shall be picked up and returned to the front entrance of the appropriate residence. The parent dropping the children off should not leave until the children are safely inside. Parents should refrain from surprise visits to the other parent's home. A parent's time with the children is their own, and the children's time with that parent is equally private.

TERMINOLOGY IN THE FOLLOWING SECTIONS INCLUDES PRIMARY CARETAKER, DESIGNATING THAT PERSON WITH WHOM THE CHILD SPENDS THE GREATER PROPORTION OF TIME AND SECONDARY CARETAKER, DESIGNATING THAT PERSON WITH WHOM THE CHILD SPENDS A LESSER AMOUNT OF TIME.

1.14 Children Under Age Five. Infants (children under eighteen months of age) and toddlers (eighteen months to three years) have a great need for continuous contact with the primary caretaker who provides a sense of security, nurturing and predictability. Generally overnight visits for infants and toddlers are not recommended unless the secondary caretaker is very closely attached to the child and is able to provide primary care. Older preschool age children (three to five) are able to tolerate limited separations from the primary caretaker. The following guidelines for children under age five are designed to take into account the child's developmental milestones as a basis for visitation. Since children mature at different rates these may need to be adjusted to fit the child's unique circumstances. These guidelines may not apply to those instances where the parents are truly sharing equally all the caretaking responsibilities for the child and the child is equally attached to both parents. Yet in the majority of situations where there is a primary caretaker and a secondary caretaker who has maintained a continuous relationship with the child but has not shared equally in child caretaking the

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following guidelines should generally apply:

A. Infants Birth to Six Months. Children need to have affectionate bonds with both parents. Overnight visits are not recommended. Time with the secondary caretaker should be spent where the child lives, as going back and forth between homes causes tension for the child. The infant's eating and sleeping routine should not be interrupted. Alternate parenting plans: (1) Three two-hour visits per week, with one weekend day for six hours; or (2) Three two-hour visits per week, with one overnight on a weekend for no longer than a twelve hour period, if the child is not breast feeding and the secondary caretaker is capable of providing primary care.

B. Infants Six to Eighteen Months.

Predictability and routine are important at this age. Overnight visits are still not recommended, but can be considered if the infant is going with older brothers or sisters the infant knows and trusts. Alternate parenting plans: (1) Three, three-hour visits per week with one weekend day for six hours; or (2) Same as (1), but with one overnight not to exceed twelve hours, if the child is not breast feeding and the secondary caretaker is capable of providing primary care; or (3) Child spends time in alternate homes, but spends significantly more time at one of them and no more than two twelve-hour overnights per week at the other. This arrangement should be considered only for mature, adaptable children and very cooperative parents.

C. Toddlers Eighteen to Thirty-Six Months. Children start to learn that things and people continue to exist even when the child can't see them. A common fear is that the primary caretaker will disappear and they may cry when a parent leaves them. Longer periods with the secondary caretaker can begin. Short visits (2-4 hours) away from the child's home are permissible, however, the child needs to take favorite things with him/her (blanket or stuffed animal or pacifier, etc.). At this age children do not understand time, or days of the week, or that they will see mother or father "tomorrow" or in "two days" or on "Sunday." When away from the primary caretaker they may feel anger and a powerful sense of loss and often do not understand why mother or father isn't there. Alternate parenting plans: (1) The secondary caretaker has the child up to three times per week for a few hours on each visit, on a predictable schedule; or (2) Same as (1) but with one overnight per week; or (3) Child spends time in alternate homes, but with more time in one than the other with two or three overnights spaced regularly throughout the week. This requires an adaptable child and cooperative parents.

D. Preschoolers Three to Five Years Old. The most important thing is predictability. Children can usually tolerate two days away from the primary caretaker and they should see the secondary caretaker at least once each week. Children still have a strong need to take familiar things with them. Alternate parenting plans: (1) One overnight visit (i.e. Saturday morning to Sunday evening) on alternate weekends and one midweek visit with the child returning to

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the primary caretaker's home at least one-half hour before bedtime; or (2) Two or three nights at one home, spaced throughout the week, the remaining time at the other home. In addition, for preschoolers, a vacation of no longer than two weeks with the secondary caretaker

1.15 Pre-Teens and Teenagers.

A. **Six to Twelve Years.** School age children need to see the secondary caretaker one or more times each week, and seem happiest with several visits each week. Children this age will want their own things at each home, but will wish to take some things back and forth with them for their own security. At about age seven, a child can cope better with longer periods of parental contact during summer months because they understand about time and can count and can understand what a week or month is.

B. **Thirteen Years and Up.** Friends and social activities are very important at this age. A decrease in the number of parental exchanges may be helpful. Teenagers have no need for long visits and once or twice a week for a few hours may be sufficient. One of the things teenagers need to do is learn to "separate" from parents and to achieve autonomy. They still need predictability and routine for their visits. Teens should be consulted in deciding on timesharing plans. Teenagers tend to want one home base.

1.16. **Children in Day Care.** In families where a child has been in day care prior to the parental separation, the child may be able to tolerate flexible visits earlier because the child is more accustomed to separations from both parents. The secondary caretaker who exercises contact of a child under age five should not during the period of parental contact place the child with a baby-sitter or day care provider. If the secondary caretaker cannot be with the child personally, the child should be returned to the primary caretaker. Visiting for short periods with relatives may be appropriate, if the relatives are not merely serving as baby-sitters.

1.17. **Parental Contact with Adolescents.** Within reason the parents should honestly and fairly consider their teenager's wishes regarding parental contact. Neither parent should attempt to pressure their teenager to make a parental contact decision adverse to the other parent. Teenagers should explain the reasons for their wishes directly to the affected parent, without intervention by the other parent.

1.18. **Day Care Providers.** When parents reside in the same community, they should use the same day care provider. To the extent possible the parents should rely on each other to care for the children when the other parent is unavailable.

1.19. Special Circumstances.

A. **Child Abuse.** When child abuse has been established and a continuing danger is shown to exist, all parental contact with the perpetrator of said abuse should cease or only be allowed under supervision, depending on the circumstances. Court intervention is usually required in child abuse cases.

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B. Spouse Abuse. Witnessing spouse abuse has long-term, emotionally detrimental effects on children. Furthermore, a person who loses control and acts impulsively with a spouse, may be capable of doing so with children as well. Depending on the nature of the spouse abuse and when it occurred, the court may require an abusive spouse to successfully complete appropriate counseling before being permitted unsupervised parental contact.

C. Substance Abuse. Parental contact should not occur when a parent is abusing drugs/alcohol.

D. Long Interruption of Contact. In those situations where a parent has not had an ongoing relationship for an extended period, parental contact should begin with brief visits and a very gradual transition to the parental contact in these guidelines.

E. Kidnapping/Threats. Parents who have kidnapped or hidden the children or threatened to do so should have no parental contact or only supervised parental contact.

F. Breast Feeding Child. Forcibly weaning a child, whether breast feeding or bottle feeding, during the upheaval of parental separation is not appropriate for the physical health or emotional well-being of the child. Until weaning has occurred without forcing, a nursing infant should have parental contact of only a few hours each. A parent should not use breast feeding beyond the normal weaning age as a means to deprive the other parent of parental contact.

G. A Parent's New Relationship. Parents should be sensitive to the danger of exposing the children too quickly to new relationships while they are still adjusting to the trauma of their parent's separation and dissolution.

H. Religious Holidays and Native American Ceremonies. Parents should respect their children's needs to be raised in their faith and in keeping with their cultural heritage and cooperate with each other on parental contact to achieve these goals. These goals should not be used to deprive a parent of parental contact.

I. Other. The court may limit or deny parental contact to parents who show neglectful, impulsive, immoral, criminal, assaultive or risk-taking behavior with or in the presence of the children.

2. PARENTAL CONTACT WITH CHILDREN OVER AGE FIVE WHEN THERE IS SOLE PARENTING OR SHARED PARENTING AND PARENTS RESIDE NO MORE THAN 200 MILES APART

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2.1 Weekends. Alternate weekends from Friday at 5:30 P.M. to Sunday at 7 P.M.; the starting and ending times may change to fit the parents' schedules. Or an equivalent period of time if the secondary caretaker is not available on weekends and the child does not miss school. In addition, if time and distance allow, one or two midweek visits of two to three hours. All transportation for the midweek visits are the responsibility of the secondary caretaker.

2.2 Mother's Day - Father's Day. The alternate weekends will be shifted, exchanged or arranged so that the children are with their mother each Mother's Day weekend and with their father each Father's Day weekend. Conflicts between these special weekends and regular parental contact shall be resolved pursuant to Paragraph 1.9.

2.3 Extended Parental Contact. One-half of the school summer vacation. At the option of the secondary caretaker, the time may be consecutive or it may be split into two blocks of time. If the child goes to summer school and it is impossible for the secondary caretaker to schedule this contact time other than during summer school, that parent may elect to take the time when the child is in summer school and transport the child to the summer school session at the child's school or an equivalent summer school session in the secondary caretaker's community.

2.4 Winter (Christmas) Vacation. One-half the school winter vacation, a period which begins the evening the child is released from school and continues to the evening of the day before the child will return to school. If the parents cannot agree on the division of this period, the secondary caretaker shall have the first half in even-number years. If the parents live in the same community, in those years when Christmas does not fall in a parent's week, that parent shall have from Noon to 9 P.M. on Christmas Day. For toddlers and preschool age children, when the parents live in the same community, the parents should alternate each year Christmas Eve and Christmas Day so that the children spend equal time with each parent during this holiday period.

2.5 Holidays. Parents shall alternate the following holiday weekends: Easter, Memorial Day, the 4th of July, Labor Day and Thanksgiving. Thanksgiving will begin on Wednesday evening and end on Sunday evening; Memorial Day and Labor Day Weekends will begin on Friday and end on Monday evening; Easter weekend will begin on Thursday evening and end on Sunday evening; while the 4th of July, when it does not fall on a weekend, shall include the weekend closest to the 4th. Holiday weekends begin at 5:30 P.M. and end at 7 P.M. on the appropriate days.

2.6. Children's Birthdays. Like the holidays, a child's birthday shall be alternated annually between the parents. If the birthday falls on a weekend, it shall extend to the full weekend, and any resulting conflict with regular visitation shall be resolved pursuant to Paragraph 1.9. If the birthday falls on a weekday, it shall be celebrated from 3 P.M. to 9 P.M. (or so much of that period as the secondary caretaker elects to use).

2.7. Parents' Birthdays. The children should spend the day with the parent who is celebrating their birthday, unless it interferes with a secondary caretaker's extended

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visitation during vacation.

2.8. Conflicts Between Regular and Holiday Weekends. When there is a conflict between a holiday weekend and the regular weekend visitation, the holiday takes precedence. Thus, if the secondary caretaker misses a regular weekend because it is the primary caretaker's holiday, the regular alternating visitation schedule will resume following the holiday. If the secondary caretaker receives two consecutive weekends because of a holiday, regular alternating visitation will resume the following weekend with the primary caretaker. The parents should agree to make up missed weekends due to holiday conflicts.

2.9. Parental Contact Before and During Vacations. There will be no parental contact the weekend(s) before the beginning of the secondary caretaker's summer vacation visitation period(s), regardless of whose weekend it may be. Similarly, that parent's alternating weekend visitation(s) shall resume the second weekend after each period of summer vacation that year. Weekend visitation "missed" during the summer vacation period will not be "made up." During any extended summer visitation of more than three consecutive weeks, it will be the secondary caretaker's duty to arrange, for a time mutually convenient, a 48-hour continuous period of visitation for the primary caretaker unless impracticable because of distance.

2.10. Notice of Canceled Parental Contact.

Whenever possible, the secondary caretaker shall give a minimum of three days' notice of intent not to exercise all or part of the scheduled parental contact. When such notice is not reasonably possible, the maximum notice permitted by the circumstances, and the reason therefore, shall be given. The primary caretaker shall give the same type of notice when events beyond their control make the cancellation or modification of scheduled parental contact necessary. If the primary caretaker cancels or modifies a visit because the child has a schedule conflict, the secondary caretaker should be given the opportunity to take the child to the scheduled event or appointment.

2.10. Pick Up and Return of Children. When the parents live in the same community, the responsibility of picking up and returning the children should be shared. Usually the secondary caretaker will pick up and the primary caretaker will return the children to that parent's residence. The person picking up or returning the children during times of parental contact has an obligation to be punctual: to arrive at the agreed time, not substantially earlier or later. Repeated, unjustified, violations of this provision may subject the offender to court sanctions.

2.11. Additional Parental Contact. Parental contact should be liberal and flexible. For any parents these guidelines should be considered as only a minimum direction for interaction with the children. These guidelines are not meant to foreclose the parents from agreeing to such additional parental contact as they find reasonable at any given time.

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3. PARENTAL CONTACT OF CHILDREN OVER AGE FIVE WHEN SOLE PARENTING OR SHARED PARENTING AND PARENTS RESIDE MORE THAN 200 MILES APART

3.1 Extended Parental Contact. All but three weeks of the school summer vacation period and, on an alternating basis, the school Winter (Christmas) vacation and Spring Break.

3.2 Priority of Summer Break. Summer break with the secondary caretaker takes precedence over summer activities (such as Little League) when the parental contact cannot be reasonably scheduled around such events. Even so, the conscientious secondary caretaker will often be able to enroll the child in a similar activity.

3.3 Notice. At least 60 days notice should be given of the date for commencing extended parental contact, so that the most efficient means of transportation may be obtained and the parties and the children may arrange their schedules. Failure to give the precise number of days notice does not entitle the primary caretaker the right to deny visitation.

3.4 Additional Parental Contact. Where distance and finances permit, additional parental contact, such as for holiday weekends or special events, are encouraged. When the secondary caretaker is in the area where the child resides, or the child is in the area where the secondary caretaker resides, liberal visitation shall be allowed and because the secondary caretaker does not get regular visitation, the child can miss some school during the visits so long as it does not substantially impair the child's scholastic progress.

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EXHIBIT F

NINTH JUDICIAL DISTRICT COURTROOM DECORUM AND PRACTICE GUIDELINES

Preface

The pursuit of justice is a serious undertaking and conduct during the litigation process, both within and outside the courtroom, must at all times satisfy the appearance as well as the reality of fairness and equal treatment. Dignity, order, and decorum are indispensable to the proper administration of justice.

A trial is an adversarial proceeding, and lawyers must advocate for their clients' positions. However, conduct that may be characterized as discriminatory, abusive, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully and efficiently. Such conduct tends to delay and often to deny justice. Attorneys are privileged to participate in the administration of justice in a unique way, and are responsible to their own consciences, to their clients, to one another, and to the public to conduct themselves in a manner which will facilitate, and never detract from, the administration of justice.

A trial is a truth-seeking process designed to resolve human and societal problems in a rational and efficient manner. A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. A judge's conduct should be characterized at all times by courtesy, patience, and fairness toward all participants, the courts belong to the people of this state. The guidelines are intended to facilitate access to the courts for the fair resolution of disputes, and should never be applied to deny access.

Application

The purpose of these guidelines is to provide lawyers, judges, and parties with a reasonable standard of conduct in judicial proceedings. However, these guidelines are not intended to homogenize conduct or remove individuality from the courtroom. To facilitate professional growth and foster voluntary compliance with these guidelines, the Judge of the Ninth Judicial District periodically reviews the guidelines. Comments are considered by the Judge and changes are incorporated as needed.

All participants in judicial proceedings should voluntarily adhere to these guidelines. The Judge of the Ninth Judicial District reserve the right to impose contempt of court or Rule 11 sanctions for violations of these guidelines. Nothing in these guidelines supersedes or detracts from existing codes or rules of conduct or discipline or alters existing standards by which lawyer misconduct may be determined.

COURTROOM DECORUM

I. General Courtroom Conduct

- A. Always be prompt.
- B. Stand when the judge enters or leaves the courtroom.
- C. Do not make personal attacks on opposing counsel. Argument or motions on

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issues not fully briefed or noticed for hearing as well as allegations of improper or unethical conduct by an attorney or party which are being raised for the first time during a trial or court hearing are generally considered efforts calculated to disrupt or distract from the issues before the court and will be cause for sanctions.

D. Do not interrupt the court or opposing counsel. Wait your turn.

E. Enhancing courtroom decorum is a cooperative venture among bench and bar. It is appropriate to call to the attention of opposing counsel any perceived violations of these guidelines out of the presence of the jury.

F. After the court has ruled, ask the court's permission before arguing further.

G. Advise clients and witnesses of the formalities of the court, the appropriate guidelines, and any rulings on motions in limine. Encourage their cooperation. This applies both to attorneys and to pro se parties.

H. If there is a live microphone at counsel table, remember not to confer with others or rustle papers near the microphone.

I. Courtrooms equipped for videotaped reporting may require special precautions, such as remaining near a microphone.

J. Counsel and the parties are expected to dress in a manner that reflects the seriousness of judicial proceedings and demonstrates an awareness of the court as a respected institution of the American system of democracy. Coat and tie are suggested for male attorneys. Corresponding attire is appropriate for female attorneys.

K. Treat everyone in the courtroom with fairness, consideration and respect. Refrain from conduct that discriminates on the basis of race, color, national origin, religion, creed, sex, age, disability, sexual orientation, or marital status.

II. General Trial Conduct

A. Offers of and requests for stipulations are appropriate to facilitate the presentation of a case, but should not be employed to communicate to the jury a party's willingness or unwillingness to stipulate.

B. During trial, maintain appropriate respect for witnesses, jurors, and opposing counsel, avoiding informality. Address adults by their titles or surnames unless permission has been given to use first names. Avoid referring to adults by biased and demeaning expressions or labels such as "girl," "gal," or "boy." Address jurors individually or by surname only during voir dire.

C. Treat jurors with respect and dignity, avoiding fawning, flattery, or pretended solicitude. Suggestions regarding the comfort or convenience of jurors should be made to the Court out of the jury's hearing.

D. During the opening statement and argument of opposing counsel, never inappropriately divert the attention of the court or the jury.

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- E. Avoid expressing an opinion to the jury about the testimony of a witness, a ruling of the court, or argument of counsel through exaggerated facial expressions or other contrived conduct.
- F. When practical, give the court advance notice of any legal issue which is likely to be complex, difficult, and which you expect to require argument.
- G. Do not argue the case in the opening statement.
- H. Counsel should not express to the jury personal knowledge or personal opinions about the evidence.
- I. Address your remarks to the court, not to opposing counsel except when extending necessary courtesies, e.g., thank you.
- J. Only attorneys, parties, court personnel, and witnesses, when called to the stand, are permitted within the bar of the courtroom, unless otherwise allowed by the court.

III. Examination of Witnesses

- A. When examining a witness, avoid undue repetition of the witness's answer.
- B. Make objections for evidentiary reasons without delivering a speech or guiding a witness. Recapitulate testimony only as needed to put an objection in context.
- C. If a witness was on the stand at a recess or adjournment, have the witness ready to proceed when court is resumed.
- D. Attempt to anticipate witness scheduling problems and discuss them with opposing counsel and the court. Try to schedule witnesses in advance of trial.

IV. Exhibits and Documents

- A. Premark exhibits with the clerk for identification prior to trial where appropriate. Hand all unmarked exhibits to the clerk for marking before using them in trial.
- B. If practical, have photocopies of an exhibit for the court, opposing counsel, and the witness. Avoid illegible copies if possible.
- C. Return all exhibits to the clerk at each adjournment.
- D. Whenever referring to an exhibit, mention the exhibit number.
- E. After an exhibit has been admitted, mark on it only with the court's permission. Avoid unnecessary markings. When referring to locations or features on exhibits such as maps or diagrams, indicate the locations by appropriate markings if they are not readily apparent from the documents.
- F. Give to the clerk all papers intended for the court.
- G. Show the proposed exhibit to opposing counsel prior to offering the exhibit in evidence.

V. Scheduling

- A. When practical, consult opposing counsel before asking for a hearing and

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scheduling a discovery appearance in an effort to avoid scheduling conflicts. Assert a scheduling conflict only if the requested time is not available, not to obtain any unfair advantage.

B. If opposing counsel fails to promptly accept or reject a time offered for hearing or discovery appearance, raises an unreasonable number of conflicts, or consistently fails to comply with this standard, agreement is not required.

C. Where time associated with scheduling agreements could cause damage or harm to a client's case, then a lawyer is justified in asking for a hearing or scheduling a discovery appearance without first consulting with opposing counsel.

D. Give notice of cancellation of appearances and hearings to all involved at the earliest possible time.

VI. Courtroom Protocol

Attorneys are advised to determine the preference of the presiding judge with respect to movement within the courtroom. Following are some examples of individual preferences.

A. Stand when addressing the' court and when making objections.

B. Stand during opening statements and closing argument.

C. Approach the bench only with permission.

D. Maintain an appropriate distance from the witness and the jury.

E. Always address the judge as "Your Honor."

VII. Discovery

A. Make reasonable efforts to conduct all discovery by agreement. Consider agreeing to an early voluntary exchange of information.

1. Comply with all reasonable discovery requests in a timely

2. Stipulate to facts unless there is a genuine dispute.

B. Conduct yourself in a professional manner and treat other lawyers, the opposing party, and all involved with courtesy and civility at all times. Clients should be counseled that civility and courtesy are required.

C. Be punctual in fulfilling all professional commitments and in communicating with the court and other lawyers.

D. Concentrate discovery responses on matters of substance and content, avoiding quarrels over form or style.

E. Clearly identify for other counsel or parties all changes made in documents submitted for review.

F. Fully respond to discovery, unless making a specific and clear objection warranted by existing law or a reasonable extension thereof. Do not produce documents in a manner designed to hide or obscure the existence of particular documents.

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VIII. Depositions

- A. Advise clients regarding appropriate behavior, attire and other matters involved with depositions and other proceedings.
- B. Take depositions only when actually needed to ascertain facts or information or to perpetuate testimony.
- C. Make only good-faith objections to discovery, and avoid objections solely for the purpose of withholding or delaying the disclosure of relevant information.

IX. Court Staff

- A. Counsel/attorneys are to fully cooperate with all court staff.
- B. Court staff includes appointed guardians, settlement masters, and standing masters by promptly returning phone calls and keeping scheduled appointments.